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INFLUENCING BC

An e-zine on lobbying, lobbyists, and transparency in public influence

O.R.L. office of the registrar of lobbyists BRITISH COLUMBIA

INSIDE THIS ISSUE:

THE WAY FORWARD: GROWTH AND DEVELOPMENT IN LOBBYING AND REGULATING LOBBYING IN BC

Happy 2013! It's hard to believe another year has come and gone already. Last year was another busy year for the Office of the Registrar of Lobbyists.

Reform of lobbying regulation has been in the air. In 2012, I was pleased to appear before the Parliamentary Committee on Access, Privacy and Ethics as it carried out a mandated five-year review of the federal *Lobbying Act*. I have noted in the past that, unfortunately, our BC *Lobbyists Registration Act* (LRA) has no similar mandated review and that, although we can work out process and system issues, we can't work out legislative kinks without such a review. In January, I tabled my recommendations for legislative amendments to the LRA with the Speaker of the BC Legislative Assembly and provided them to the Minister of Justice and Attorney General. I believe that my recommendations address some legislative shortcomings of the LRA and, if they are adopted, will promote greater transparency, level the playing field, ease registration and harmonize with developments taking place across the country.

My recommendations for legislative reform came after we completed an extensive public consultation last year. We began the process in April by publishing a discussion paper on whether BC should adopt an enforceable code of conduct for lobbyists. Our consultation with public office holders, lobbyists, industry groups, civil society, academics and other regulators allowed me to conclude that BC does not have a widespread problem with unethical lobbying. Although there are some "outliers" with unethical habits, this minority does not at this time warrant the adoption of a free-standing code of conduct that would apply to all lobbyists in BC.

During the public consultation, we heard from many sources about ways in which the LRA could be strengthened to increase transparency and streamline regulatory processes for lobbyists. In my report, I concluded that, to enhance transparency, support existing ethical standards for public office holders and strengthen the public decision-making process, BC should embed certain aspects of other jurisdictions' codes of conduct into the existing LRA.

Accordingly, I have made a limited number of important recommendations for reforming the LRA. Lobbyists should be required to be explicit in their communications with public office holders that they are lobbying and on whose behalf and ensure the information they provide is accurate. They should also register actual lobbying activity within a reasonable time after it occurs. At present, some lobbyists are required to register intended lobbying before it has taken place, and others register actual lobbying only after lobbying for 100 hours. Finally, they should declare in their registration whether they, their client or their employer has made a political contribution reportable under the BC *Election Act* to the MLA or cabinet minister they are attempting to influence.

Additionally, there should be rules defining what gifts or benefits a lobbyist may offer any public office holder—whether a ministry employee or a Crown corporation employee — to support general standards of conduct that apply to the public sector.

-Elizabeth Denham, Registrar of Lobbyists

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THE WAY FORWARD: GROWTH AND DEVELOPMENT IN LOBBYING AND REGULATING LOBBYING IN BC

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Also, to minimize undue influence in the lobbying process, lobbying by former cabinet ministers and other high ranking public office holders should be banned for two years after they leave office, while granting them the ability to request an exemption.

Laws are living documents that grow and change as we learn more about the conditions they are designed for. It is not unusual for legislation to have mandatory review clauses, and the oversight of omitting such a clause from the LRA shouldn't impede us from taking a proactive look at how the act could be amended to do its job—promoting transparent lobbying—more effectively. Doing so can only strengthen our democratic processes and increase public trust in those processes.

In January, we co-hosted with Simon Fraser University's Institute of Governance Studies (IGS) a second conference on lobbying in BC. I extend many thanks to Dr. Patrick Smith, Director of the IGS, and SFU President Andrew Petter for once again collaborating with us, for sharing resources to support the event, and for contributing their vision. I was also pleased to work closely with members of the emerging BC chapter of the Public Affairs Association of Canada (PAAC), led by Adam Johnson, and to have on the conference roster Stephen Andrews, a Government Relations Advisor with Borden Ladner Gervais and the current Vice-President of the national PAAC.

We had a great turnout and an exciting day of discussion about how lobbying can contribute to the development of sound public policy and how reforming the LRA could enhance lobbying oversight in BC. It was gratifying to hear about steps the lobbying industry in BC is taking toward increasing professionalization, and I offer my continued encouragement to those members of the industry who are working toward that goal.

I wish everyone a prosperous and productive 2013.

-Elizabeth Denham

Websites of Interest

BC Lobbyists Registry
www.lobbyistsregistrar.bc.ca

Newfoundland and Labrador Registry of Lobbyists
http://www.servicenl.gov.nl.ca/registries/lobbyists.html

Institute of Governance Studies
http://www.sfu.ca/vpresearch/centres/institute-of-governance-studies.html

Public Affairs Association of Canada
http://www.publicaffairs.ca/index-reg.html

BC LOBBYISTS REGISTRY UNDERGOES SYSTEM ENHANCEMENTS

In response to suggestions from lobbyists and the public, the BC Lobbyists Registry undergoes regular system upgrades.

As a result of recent upgrades:

- It is now possible for members of the public to search the Registry by lobbying firm name, and lobbying firm names also appear, when relevant, in a column in all search results.
- The Registry staff can now send a broadcast email to all registrants via the Registry, which makes communication with registered lobbyists more effective.
- The "Delete" button should no longer disappear while registrants are updating their registrations.
- The "Undertaking end date" for consultant lobbyists is now a mandatory field, meaning that consultant lobbyists must enter a reasonable end date for their undertakings.
- The Office of the Registrar of Lobbyists logo and links to external websites have been updated to correspond with the ORL website.

We appreciate your ongoing comments and suggestions and will continue to look for ways to improve the registration process, search functions and system as a whole as our budget permits.

ROADWORKS: LOOKING DOWN THE ROAD—FILLING POTHOLES AND EXTENDING THE GRID

BY DR. PAUL PROSS

Dr. Paul Pross

This is the final installment of a three-part series adapted from an address by Paul Pross, Professor Emeritus of the School of Public Administration, Dalhousie University. The address was presented at the first conference on lobbying in BC, "Why the Road Exists and Where the Rubber Hits It," held in Vancouver, BC, on December 2, 2011 and co-sponsored by the Office of the Registrar of Lobbyists for B.C. and the Institute of Governance Studies at Simon Fraser University. In the first installment, published in the May 2012 issue of Influencing BC, Dr. Pross examined the impetus for and development of Canada's lobbying laws. The second installment, published in the September 2012 issue, assessed the progress of Canada's lobbying laws. In this last installment, Dr. Pross looks down the road ahead and comments on needed changes to fill the potholes and extend the grid.

There are potholes aplenty in the road we are traveling along. (Duff Conacher's Democracy Watch does a good job of pointing them out. See democracywatch.ca/). Filling them in requires some common sense and hard work, but not extensive debate. For example, we need more sophisticated definitions of "grass roots" lobbying. According to some registration sites, disclosure of grass roots communication may only require reporting of speeches given at the grass roots. In fact, grass roots lobbying involves advertising, astro-turf organizations, linkages to existing organizations (e.g. patient support groups), use of social media, the internet and "webinars," to name a few core activities. We need to eliminate vague, imprecise disclosures and to work out more flexible regulations for small public interest groups. We also need to make lobby registration a genuinely national institution by gradually extending lobby regulation to all provincial jurisdictions, improving investigatory resources and bringing more registries under direct control of their provincial legislatures. To secure better enforcement and compliance, we need to make more use of administrative sanctions such as denial of registration, short-term lobbying bans, administrative fines and public reports. Finally, we need to continue the public education initiatives that some commissioners/registrars have undertaken, and we need to strengthen the gatekeeper roles of professional lobbyist associations.

Filling all these potholes will take time and effort, but today let us leave all that to the local road gangs and kibitzers, and instead look down the road to some long-term issues. These include things such as: (1) bringing the public service into the regulatory process; (2) identifying the scale of lobby activity; (3) tackling the problem of "mapping"; (4) expanding transparency within government; and (5) extending lobby regulation to the municipal arena.

In a previous edition of *Influencing BC,* I addressed the issue of bringing the public service into the regulatory process. (See Pross, Paul. "There Must be a Better Way: The Problem of Locating Lobbying Activity." *Influencing BC*, Sept. 2011.) I argued that we need to engage civil servants more fully in lobby regulation by requiring them to identify and report non-compliant lobbying. This sounds formidable, but all it requires is a simple procedure for checking registrations when advocates for policies and programmes seek interviews with officials. If the lobbyists have registered, the civil servant need do no more and may be slightly better prepared for such meetings. If the individuals have not registered, then the official would be best advised to notify the registry and put off any meeting until the lobbyist's status is clarified. This reform can be achieved through further education of public servants to increase their awareness of lobbying practices and regulations, and it can be reinforced through the codes that define the public servant's responsibilities.

> ***"Despite the difficulties that lobby accounting presents, we can be sure that demands for this information will grow."***

We also need to find ways to indicate the scale of lobbying activity being undertaken by interested parties. We collect some of this information by requiring disclosure of coalition memberships, grass-roots lobbying and identification of the agencies being approached. But these provide only a very limited peep into the world of lobbying. The Americans are more forthright and insist on looking at the money trail. Or, at least, that is what they try to do. Unfortunately, it is very difficult to collect meaningful financial data on lobbying. A well-organized lobby, such as the lobbies that have battled for decades over tobacco regulation, seldom stops at hiring lobbyists to buttonhole senior officials. It does extensive background research, identifying allies, testing the effectiveness of arguments, determining how to frame core issues, conducting focus groups, forming alliances, coordinating them, engaging in advertising campaigns and so on. None of this is cheap and all of it can involve elaborate accounting. Analysis of any significant lobbying campaign shows that it is a mistake to believe that disclosure of lobbyists' fees and routine expenses provides a proxy for estimating the true costs of campaigns.

Despite the difficulties that lobby accounting presents, we can be sure that demands for this information will grow. Media stories about large-scale lobbying campaigns supporting everything from pipelines to provincial formularies, reinforced as they often are by the personal experience of members of the public, cast doubt on the probity of our governments and weaken democracy.

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ROADWORKS: LOOKING DOWN THE ROAD: FILLING POTHOLES AND EXTENDING THE GRID

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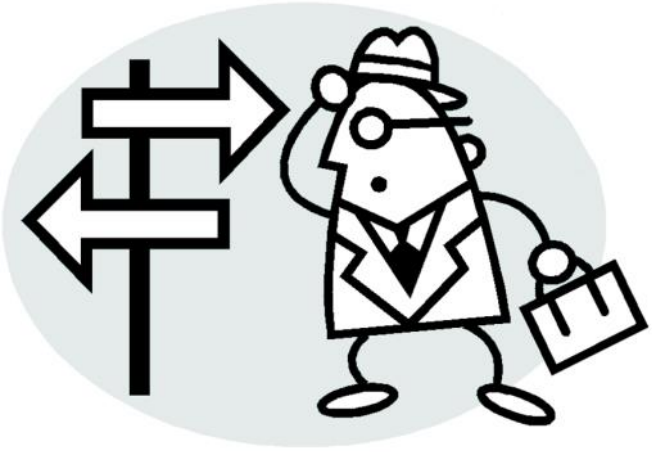
BY DR. PAUL PROSS

We must also address the problem of "mapping." This term became fashionable when the federal *Lobbyists Registration Act* ("LRA") was first debated. Members of the House of Commons committee that investigated the lobby regulation issue concluded that registration should cover not only those who actually lobby officials and make appointments for themselves and clients, but those who research issues and map the strategies needed to successfully complete a campaign. The Mulroney government decided not to accept the committee's advice and, in large measure, that activity is still not registered at the federal level. Much of it is routine research that probably does not warrant regulation, but some of it does. This became evident during the 2012 Republican primary race in the United States when Newt Gingrich claimed that he was not a lobbyist, despite the research activities of his Center for Health Transformation. As an editorial in *The New York Times* put it, the Center's services "included helping his clients formulate arguments to get lawmakers to incorporate their interests in legislation." Mr. Gingrich was never required to register as a lobbyist, that is as...

> ... someone who is paid to go to Congress or government offices and make specific pledges on behalf of special pleaders to influence legislation. But people of his stature never register. They develop strategy and use their contacts to open doors and then leave the appointment-making to more junior people who register as lobbyists. ('The Power Broker', *New York Times*, January 23, 2012)

The Gingrich case is relevant to Canada, because we, too, have "people of his stature" who never register and who hold advisory positions with lobbying firms where they stay in the background, cast an informed eye over the activities of their former colleagues, chat casually with them at social gatherings and hone an already shrewd understanding of the progress a file is making toward a decision. They can then advise clients on the best strategies and the best routes to get their interests accommodated. These individuals are not affected by "revolving door" regulations. The question we have to answer is: To what extent should they be required to register? Perhaps at some point in the future, former designated public office holders will be required to register as lobbyists and to observe moratoria.



Despite more than thirty years of rhetoric about the need for government transparency, the Canadian public remains poorly informed about the processes that agencies use to arrive at policy decisions and recommendations. Technical advisory committees are necessary and widely used, but membership is restricted and their deliberations are not readily available. Consultations with organizations and individuals within policy communities are frequent, but tend to be confined to "stakeholders" recognized by the agencies. Public servants participate frequently in professional organizations as active members and at conferences and seminars. At those events they become part of key networks and engage in further communication with professionals who are outside government. These are appropriate activities, but they are not activities that can be easily observed or shared with wider publics, and for the most part they escape the registration radar.

A considerable push within the general public to improve consultation mechanisms has led to a more general awareness of these interactions. Eventually, we can expect that agencies will be required to report at least some of them. For example, federal regulations already require consultant lobbyists to report participation in government-initiated activities such as consultations, hearings, roundtables, or like activities, but exclude reporting where transparency is comparable to that of a parliamentary committee, with participants, proceedings and decisions readily available publicly. (See the July 2009 Office of the Commissioner of Lobbying Interpretation Bulletin, "Communicating with Federal Public Office Holders.") The mandates and membership of advisory committees could be routinely made public along with synopses of meetings and extension of membership to organizations representing alternative publics. Somewhat more remote is the possibility that agencies will be required to provide on their own websites links to proceedings of conferences that their officials have attended, and which have received agency financial support.

Finally, we can expect to see lobby regulation extended to the local government level. In the major urban areas, this will probably occur on a city level, as it has already in Toronto and, since this talk was delivered, in Ottawa. Elsewhere, provincial registrars are more likely to be required to extend their authority to the local level, in much the same way that the Québec Commissioner of Lobbying has been required to do. The reasons are familiar to anyone who follows local government affairs, observing particularly the roles that developers play in election campaigns and their influence over planning and re-zoning decisions. In major urban areas, the scale of investments in goods, services, infrastructure and other facilities is large enough to attract a variety of interests.

This series of articles has looked back at the winding road that has led to our current state of lobby regulation. We saw that the federal government's pioneer

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BY DR. PAUL PROSS

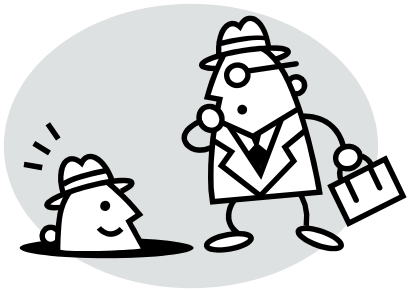
legislation reflected bureaucratic concerns for identifying the sources of lobbyists' approaches to officials, the public's interest in the integrity of government and a broader concern for the democratic deficit.

Historically, the legislation—federal, provincial and municipal—evolved from an emphasis on meeting bureaucratic needs to a central concern with democratic values. Of the three democratic concerns contributing to the LRA—transparency, openness and equality of access—regulation has enhanced transparency and provided information that attentive publics can use to demand openness and equal access. But its capacity to expand openness and access is limited. It is more feasible to do that through other instruments in the regulatory regime.

Looking back, we can see that the development of lobby regulation has followed a classic pattern of reform. First came issue recognition, which ultimately was grudgingly acknowledged in legislation that was weak, but made possible incremental improvement. Improvement that sometimes, as in the case of the *Federal Accountability Act*, followed public outcry, but also was facilitated by regulators and participants in the policy community.

Regulation has rendered lobbying more transparent than in 1985. We can see that in improved registration statistics, more extensive use of registry information in the media, tighter disclosure requirements, interpretations closing off loopholes (e.g., requirements to report invited communications), and more energetic, better resourced verification and investigation. Most progress has been made in identifying lobbyists, their clients and their targets, exposing and to some extent limiting the influence of previous public office holders and providing independence and resources to regulators.

But further progress is essential. The bureaucracy must be engaged in enforcing lobby regulation. We should eliminate exclusions that permit significant lobbying to take place away from the public eye. We should identify the scale of lobby campaigns, open up government policy processes and combat inequality between interests. If the past is any guide, some of the suggestions made in this series will be dismissed as impractical, ideologically driven and unwarranted. But, again if the past is any guide, some of them will come to pass, because lobby regulation, like the regulation of speed limits on our roads, is necessary to ensure the orderly and democratic flow of communications between governments and publics.



BC REGISTRAR OF LOBBYISTS ISSUES ADMINISTRATIVE PENALTY

Elizabeth Denham, the BC Registrar of Lobbyists, issued an administrative penalty in December 2012 for non-compliance with the *Lobbyists Registration Act* (LRA).

An investigation carried out by Deputy Registrar Mary Carlson of the BC Office of the Registrar of Lobbyists (ORL) found that consultant lobbyist Jay Hill had registered an undertaking to lobby when he had not in fact been retained to lobby. The Deputy Registrar found the evidence indicated that Mr. Hill had supplied inaccurate information to the Lobbyists Registry, contravening sections 3(1) and 4(1) of the act. In her *Investigation Report 12-15*, the Deputy Registrar said that filing inaccurate information undermines the goal of transparency that is the basis for the act and, in applying an administrative penalty of $2,500, the Deputy Registrar said, "A clear message must be sent to the lobbying community that the ORL expects lobbyists to take seriously their responsibilities for filing accurate and timely information."

The LRA allows a person to request that the Registrar reconsider a finding, and Mr. Hill requested that the Registrar do so. The act requires that the Registrar reconsider the grounds of the decision and rescind, confirm or vary the amount of the penalty.

In her *Reconsideration Report 12-01*, Registrar Elizabeth Denham confirmed the Deputy Registrar's findings but reduced the amount of the penalty to $250. In her report, the Registrar said, "There is no evidence of an economic benefit to Mr. Hill or economic harm to others. I am also of the view that Mr. Hill's motives in registering are relevant. I accept that, far from setting out to mislead anyone or conceal his activities, he filed a return in an effort to be open." The Registrar also stated, "[I]ndividuals should expect that future such contraventions are likely to yield penalties within the $1,000 to $7,500 range set out in the Policies."

Copies of both reports can be found on the ORL website:

www.lobbyistsregistrar.bc.ca

Lobbying Is Sometimes Hard: Lessons Before and After in BC

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By Dr. Patrick J. Smith

Dr. Patrick J. Smith

British Columbia's first Ombudsman was appointed in 1979, following a trend that began in Scandinavian countries. The object of creating a new independent office of the legislature was to ensure administrative fairness and accountability in the public service, but the reform initiative was not universally welcomed. Opposition came largely from those most directly affected by the creation of the new independent oversight office, the public bureaucracies, which were now subject to new forms of administrative audit, answerability and scrutiny. Public servants protested that they were already publically-minded and professional in fulfilling their duties and in their dealings with the public, so such oversight was unnecessary.

In response, Karl Friedman, our first Ombudsman, began a years-long dialogue with the province's public servants and others covered by the *Ombudsman Act*, such as professions, post-secondary institutions, local governments, etcetera. It began with publication of a booklet for all public servants called *Running Things Is Sometimes Hard.* The booklet set out what the ombuds' office did and began defining what good (vs. mal-) administration was. Dialogue continued through annual reports, which pointed out both problem areas and areas where good administrative work was being done. The ombuds' office rounded out phase one of the new relationship by publishing a *Code of Administrative Justice* in the 1982 annual report, explaining what the ombudsman meant when he noted something was "unfair" or "unreasonable," etcetera. This dialogue across much of the initial term of the new ombudsman was designed to demonstrate that the office itself was accountable and was not anti-administration.

And, to a considerable extent, it worked. As those covered by the act came to realize, the ombudsman's reports indicated that they demonstrated a high level of professionalism, administrative care and fairness in public decision-making; the annual reports reinforced and acknowledged this, even while pointing out smaller incidences of decisions that caused concern. During this process, the mistrust of those under review lessened, the dialogue improved, and new Ombuds-office holders added value to make the oversight relationship more positive. The process of institutionalizing the Ombuds-idea eventually came to be one seen mostly as assisting in better administration in the province and supporting rather than critiquing public decision-makers. (For a more extensive review of the BC Ombudsman/Person Office see P. J. Smith, "Fairness Inc.: Administrative Justice In British Columbia — The Ombuds Office @ 30" in Stewart Hyson, ed., Provincial and Territorial Ombudsman Offices in Canada. Toronto: Institute of Public Administration of Canada Series in Public Management and Governance. University of Toronto Press, 2010, ch.3.)

Why is this worth pointing out?

Mostly, perhaps, as a reminder to those in the lobbying business that there has been a rules change; you know that. What is less clear is how you see the Office of the Registrar of Lobbyists at the still front end of a new relationship and oversight.

Permit an outsider who sometimes gets paid to muse on such matters to say that the early going on BC lobbying legislation is not too dissimilar to what Karl Friedman found in the public bureaucracies of the province: some distrust, ambivalence, even a little hostility, followed by tentative steps to understand and begin to improve the relationship. Hence my title.

The quality of the dialogue, and the understanding that the trend line on these reforms — from ethics and conflict of interest to lobbying registration, accountability and transparency — is a significant change in what has been seen as normal in the past. Petitioners from the *Great Reform Act* of 1832 used the lobbies of the UK Parliament to seek legislative and governmental action and support, and in the 1870's, Ulysses S. Grant received presidential supplicants while he smoked cigars and sipped brandy in the lobby of Washington, DC's Willard Hotel — supposedly referring to them as "those damn lobbyists." Those days are over, or at least have changed—like cigar smoking in public settings. Brandy and lobbying remain.

What are the next steps?

One is the recognition that new lobbyist registration oversight is a two-way street. To this outside observer, that appears to already be happening in British Columbia. Last year, SFU's Institute of Governance Studies and the ORL co-hosted the first conference on lobbying issues in BC. That initial 'conversation on lobbying' was useful, even as it contained a degree of skepticism and some annoyance about the new oversight order. In 2012-13, the ORL commenced an ongoing consultation on whether BC needs a lobbyist code of conduct. That process produced the January, 2013 ORL-BC report *Lobbying In BC – The Way Forward: Report On Province-Wide Consultations and Recommendations for Reform*, which should offer clues on the benefits of engagement and two way traffic, as its recommendations suggest that authentic dialogue took place during the consultation.

Do we need a code of conduct? Alternatively, might there be tweaking on definitions and coverage via the act? More simply, "Who is responsible for what?" Again to an outside observer, the 2013 consultation report seems to offer a good and productive basis for talking this through. Yes, there are things that might be added to clarify key aspects and requirements of the act; and yes, the emerging 'profession' of BC lobbyists has an important role to play in clarifying conduct rules and policing aspects of lobbyists' conduct, not unlike Law Societies or Colleges of Physicians and

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BC's Second Conference on Lobbying: Growth and Evolution

On January 25, 2013, the BC Office of the Registrar of Lobbyists (ORL) and Simon Fraser University's (SFU) Institute of Governance Studies co-hosted BC's second conference devoted to lobbying in BC. The theme of this year's meeting was "growth and evolution," and the focus was on reforming lobby regulation and evolving professionalization of the lobbying industry in BC.

The conference included sessions from public office holders and industry leaders on best practices in lobbying, information about current efforts to develop a provincial-level industry association, and a discussion of how lobby regulation in BC might be reformed to streamline registration processes and further enhance lobbying transparency.

Highlights included:

- MLA and Deputy panel: Former NDP cabinet minister Elizabeth Cull, retired BC Deputy Minister Philip Halkett and current Liberal MLA/ former Liberal Cabinet Minister Colin Hansen spoke candidly about what does and doesn't work for lobbyists trying to deliver their message to decision-makers.

- Best practices session: Dr. Stephen Andrews, Government Relations Advisor with Borden Ladner Gervais and Vice-President of the Public Affairs Institute of Canada, and Geoff Morrison, Director of Government Affairs for the Canadian Association of Petroleum Producers, discussed how knowing the audience, understanding policy processes and long-term planning for government relations and lobbying are important principles in successful lobbying.

- Paths to Professionalization panel: BC lobbyists Adam Johnson, Principal with Earnscliffe Strategy Group and Tom Syer, VP of Policy and Communications with the BC Business Council, discussed current efforts to create a BC-based industry association and the potential for other home-grown efforts toward professionalization of the industry.

- Road to Reform panel: Bruce Bergen, senior counsel for the Office of the Commissioner of Lobbying for Canada and Mary Carlson, Deputy Registrar of Lobbyists for BC, gave an overview of where lobby legislation began in Canada and recent recommendations for legislative reform made by the Registrar of Lobbyists for BC; Dr. Patrick Smith, Director of Simon Fraser University's Institute of Governance Studies, compared current developments in lobbying oversight to a similar, earlier, development of oversight of the BC Public Service by the Office of the Ombudsperson; and Serge Corbeil, Government Relations Manager of the Insurance Bureau of Canada for BC, Saskatchewan and Manitoba, provided an industry perspective on challenges and opportunities for lobby reform in BC.

Approximately 80 people attended the conference, which was held at Simon Fraser University's downtown campus meeting rooms at Harbour Centre. Thoughtful and engaged questions followed the sessions, and attendees networked and continued the discussion over morning coffee and lunch.

This conference was the second conversation on lobbying co-hosted by the ORL and the SFU Institute of Governance Studies, and the success of this year's meeting suggests that a third conference might be undertaken next year.

Lobbying Is Sometimes Hard: Lessons Before and After in BC

(Continued from page 6)

By Dr. Patrick J. Smith

Surgeons. That would seem a good next step in answering, "Who is responsible for what?" On a two way street, both sides have responsibilities and much of the work on codes and conduct would seem best placed with the growing professionalism of the local lobbying industry.

Neither by itself will be sufficient; both together are necessary. The main drivers for these changes are neither the ORL nor BC lobbyists. It is the BC public. This is clear as reviews of expanding the coverage of the BC *Conflict of Interest Act* also continue. The calls for ethical review, for transparency and accountability — and, simply, the capacity of any interested public to check in and see what is happening — has grown exponentially amongst the public. This, and the independent offices that assist in ensuring it occurs, are now an enduring aspect of modern good governance.

None of this says "lobbying is bad"; anyone who thinks about governing in a democracy tends to understand that putting your ideas forward to public decision-makers can and should be a good thing. Doing so "in the sunshine" of public scrutiny certainly represents a change from the lobby of the Willard; and that is a good—democratic—result. More importantly, as we move forward, it will also serve well the development of good democratic lobbying best practices.

There is, of course, still room for reform. It was the Watergate's Deep Throat who made the simplest of suggestions to Woodward and Bernstein when they appeared to lose the thread: "Follow the money." So, in terms of reform ideas, gifts and gifting matter, just look at the Charboneau Commission in Montreal/Québec, even if not every mob-related witness is telling the truth. Les Habitants tickets and corporate seats are worth something and appear sufficient to have developed a nexus of gift and contract awarding. Over the years Conflict/Ethics legislation has sought to define and redefine/limit the potential impact of gifting. That will continue, driven by the test of the ordinary, well-informed person's concern. This remains a decent democratic test on such issues.

Political contributions also matter. In BC these remain a question, most noticeably in local governments. Here there are *no* limits on who can contribute, on what they can contribute and on what candidates can spend. We are the 'Wild West' of political/electoral contribution regulation. The 'losing bidders' on a $100 million Surrey Casino proposal contributed considerable dollars to the 2011 local elections there. That they lost the bidding process may say something, but the City council vote was 5-4 and the South Surrey community was 90% opposed, so votes trumped dollars in this particular democratic game. At 55% or 60% local opposition, one is left wondering whether political financial support might have tipped the balance the other way.

The January 2013 ORL report proposes to "minimize" the impact of both gifting and political contributions. For a more level democratic playing field—and for better public understanding of the benefits of proper lobbying—this would seem a good thing. Linking it to reportable campaign limits, as the report suggests, would seem a common sensible start.

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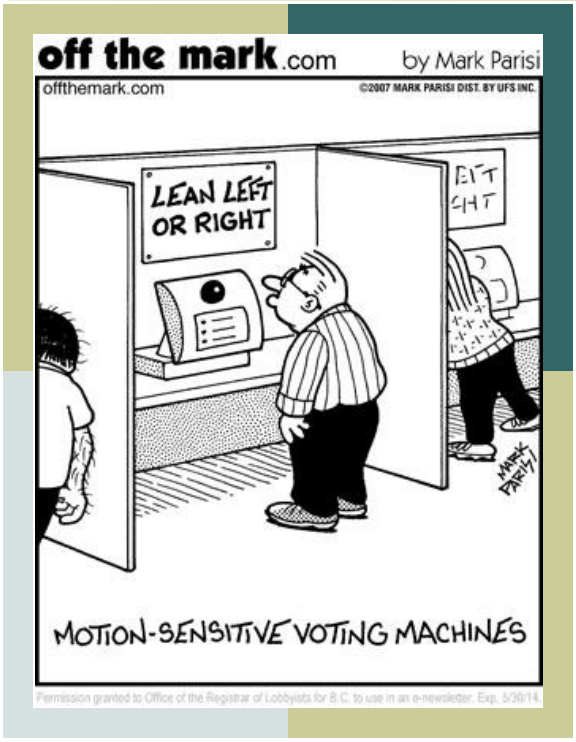

CALENDAR OF EVENTS

March 1, 2013

Deputy Registrar of Lobbyists Mary Carlson will speak and answer questions on lobbying at the program, "In Your Best Interest: Building Effective Government Relations," presented by the Centre for Organizational Governance in Agriculture (COGA), a Committee sponsored by the BC Council of Marketing Boards.

March 15, 2013

Deputy Registrar of Lobbyists Mary Carlson will be a co-speaker with Bob Wyatt, Executive Director of The Muttart Foundation, Edmonton, at the Vancouver United Way Public Policy School. Ms. Carlson and Mr. Wyatt will discuss charities and lobbying.

Lobbying Is Sometimes Hard: Lessons Before and After in BC

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By Dr. Patrick J. Smith

One of the best democratic tests is whether the public and public office holders/ senior public servants will also know the new/developing roadmap/rules, and whether public acceptance and good governance/democratic practice will prevail. Debates about post-employment limits of five years or more, versus more reasonable and sustainable limits, such as two years, should be sufficient.

All the recommendations in the report will actually serve the interests of the BC lobbying community well as we move forward. To facilitate such positive movement, professional entities such as PAAC-BC, GRIC, etcetera, will need to become central/ cooperative players; codes of professional conduct and movement on industry standards will need to be proposed and agreed; transparent self-regulation capacity will need to be developed. Lessons from longer established professions—even recognizing that lobbying is a long-established activity—will be helpful too. Getting to critical mass of support from all interested groups in British Columbia will assist here too.

In the process, what was irksome can become helpful; partnering to ensure broader public understanding and acceptance will overcome ambivalence; driving on a two way highway will become more like Interstate travel than travelling on an unpaved country road. Major potholes will mostly be avoided, and being a lobbyist may be seen by the general public more as an aid to democratic governance than as a secret, potentially corrosive force.

What else might be needed, beyond clearer agreed-upon professional standards — a task for the industry itself in large part — and some legislative clarification and tweaking in the act?

One major omission – back to the Surrey Casino proposal and lobbying around it – is local governments in BC. There are about 200 such 'governments' and, as the BC Chambers of Commerce remind, they (the local governments) spend a significant amount of BC's public $'s around their public decision making. Most of this is done by part-time politicians with remarkably little professional and policy political support. (See Kennedy Stewart and P.J. Smith, "Immature Policy Analysis: Building Capacity in Eight Major Canadian Cities," in *Policy Analysis in Canada: the State of the Art.* Omitting municipal government from an increasingly multi-level governing universe — what the Australians call "whole of government" — means that a major area of BC lobbying is not included as we move forward. This omission does not serve best practice learning in BC very well. (For more on this see Patrick Smith, "Institutionalizing Lobbyist Registration in British Columbia: Lessons From Establishing Independent Officer 'Watchdogs' and Starting New Conversations" in *Influencing BC,* (ORL-BC) vol.2. no.1, January 2012, pp. 4-5; and "British Columbia Needs a Municipal Registrar of Lobbyists" in *Influencing BC,* (ORL-BC) vol.2. no.2, May 2012, pp. 7-8.)

"If public accountability is the goal, then there is essentially no substitute for an Independent Officer of the Legislature."

In the vein of the Chinese curse, "be careful what you wish for," the BC Chambers of Commerce, lobbying very successfully for an Auditor General for Local Government, produced an expensive duplication of government: We already have a provincial Inspector of Municipalities, though this office was substantially underutilized. By creating a separate office for the Auditor General for Local Government, we have settled for a 'poor cousin' who is far from Independent and who simply reports to 'the Minister.' In the parlance of our long gun debates, "This dog won't hunt"!

If public accountability is the goal, then there is essentially no substitute for an Independent Officer of the Legislature. Such will not always bring good news, but an effective Independent Officer will build a regime that is fully understandable, workable and which will garner public acceptance of the activity being overseen. (On such independence see P. Smith, "Will This Dog Hunt? Requirements for an Independent Seniors' Advocate for British Columbia," *Vancouver Weekly,* June 26, 2012.)

That is no small step in terms of letting the future unfold as it should. Lobbying need not be hard; it will be different under the recently-recommended oversight and registration reforms. Ulysses S. Grant would be pleased. So should BC's lobbyists!

Patrick J. Smith is the Director of the Institute of Governance Studies at Simon Fraser University. This article is based on Dr. Smith's remarks for the second conference on lobbying in BC, Growth and Evolution, co-hosted by the BC Office of the Registrar of Lobbyists and the Institute of Governance Studies, SFU, in Vancouver, BC, on January 25, 2013.

ORL Requests Feedback On Proposed Recommendations

The Office of the Registrar of Lobbyists (ORL) is requesting response from lobbyists, public office holders, interested members of the policy community and the general public on recommendations for legislative reform made in a report, *Lobbying in BC —The Way Forward: Report on Province-Wide Consultations and Recommendations for Reform*. The Registrar tabled the report on January 21, 2013.

Highlights of the Registrar's report include these recommendations:

- Before communicating with a public office holder, lobbyists must declare to that public office holder that they are lobbying, on whose behalf they are lobbying and identify any other third party interests that are funding and/or directing the lobbying.
- Lobbyists shall not knowingly provide false or misleading information to a public official and shall use proper care to avoid doing so inadvertently.
- Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing gifts or benefits of any kind, unless that gift or benefit is of nominal value, the exchange creates no obligation, reciprocation is easy and the exchange occurs infrequently.
- Former public office holders as defined by the LRA shall not lobby for a period of 24 months after leaving office, with the ability to apply to the Registrar of Lobbyists for an exemption.
- Lobbyists must declare directly in their registration, whether they, their client or their employer has made a political contribution reportable under the *Election Act* to the cabinet minister or MLA they are lobbying.
- Remove the current requirement for designated filers to list who they "expect to lobby" and replace it with the requirement that designated filers list who they have lobbied and the date the lobbying took place within 10 days of its occurrence.
- Designated filers must identify by name any public office holder they lobby who occupies a senior executive position, whether by title Assistant Deputy Minister, Associate Deputy Minister, Deputy Minister, Chief Executive Officer, Chief Operating Officer or similar rank.
- Designated filers must identify other persons or organizations that control or direct the lobbying activities and/or have a direct interest in the outcome of the lobbying, including agencies that fund or direct the activities of an organization or client represented in a lobbying effort.

The full text of the report can be found here or by clicking on the link at the ORL website.

The ORL is now soliciting comments on the report's recommendations, and welcomes feedback from all stakeholders and interested observers. If you would like to submit comments on the report's recommendations, please send them by May 15, 2013 to:

info@bcorl.ca or

PO Box 9038 Stn Prov Govt, Victoria BC V8W 9A4

All feedback received by May 15 will be incorporated into a follow-up summary of stakeholders' comments to be tabled in the Legislative Assembly in September.

We're Online!

www.lobbyistsregistrar.bc.ca

Thanks for reading this issue of Influencing BC!

To find out more about the Office of the Registrar of Lobbyists British Columbia, or to comment on any of the information contained in this e-zine, please visit our website at www.lobbyistsregistrar.bc.ca, or contact our office.

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